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In This Issue

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VOL. 23 AUGUST, 1948 No. 12

INVITATION TO UNPROFITABLE LEARNING

By Walter L. Nossaman,
President, Los Angeles Bar Association

President Nossaman

THE great Louis D. Brandeis, in a lecture delivered to my law school class, exhorted us to careers of socially useful activity. Whatever influence we might acquire was, as I recall, to be devoted to the improvement of law and government—in just what manner I am not clear, further than that he expounded an idealistic philosophy then current. The irascible Professor Edward H. ("Bull") Warren, considering these activities none of a lawyer's business, was infuriated at this advice, and admonished us to try to make fairly competent lawyers of ourselves. That, he said, would take all our time.

Experience has confirmed Professor Warren's prediction. Indeed, it has seemed to some of us that all our time has not proved quite adequate for unqualified success in that particular endeavor. Nevertheless, it appears in retrospect that Justice Brandeis's advice reflected an experience and wisdom to whose counsels every generation of lawyers might well give heed. Such admonitions constitute a challenge, reminding the lawyer that he is, or should be, something more than an artisan, that he is a debtor to his profession and to the society that in giving

him a place in the administration of justice, has made him a *quasi* public servant.

Although the lawyer's lot is, in the Miltonic phrase, "to scorn delights and live laborious dayes," he like other men is, though some will dispute it, a human being, and cannot spend all his time weaving, either those "elusive and subtle casuistries" of which Mr. Justice Frankfurter speaks in *Helvering v. Hallock*, 309 U. S. 109, 118, or the less fancy sort of casuistry which, though neither elusive nor subtle, is considered sufficient for the particular emergency. To the lawyer who has the inclination and energy to do a little work in what might otherwise be hours of leisure, I recommend the study of jurisprudence.

Jurisprudence may be defined as the science of law (Gray, The Nature and Sources of the Law, 2d ed., p. 133; Salmond, Jurisprudence, 10th ed., p. 1), or as the philosophy of law (Goodhart, An Apology for Jurisprudence, in Interpretations of Modern Legal Philosophies, p. 283). Considered in the latter sense, it deals with "the ends, the ethical basis and the enduring principles of social control" (Pound, An Introduction to the Philosophy of Law, p. 1). A recent writer reduces the main headings of the science to three: analytical jurisprudence, which deals with the interrelation of legal rules or precepts, seeking to determine to what extent they form a logically self-consistent system; sociological (functional) jurisprudence, which includes the history of legal doctrines and institutions, and considers their effect upon men—how the law in its practical operation works; critical or ethical jurisprudence, which evaluates the law in terms of what it ought to be (Julius Stone, The Province and Function of Law, pp. 30-36).

The books on jurisprudence are heavy reading. None is likely to be selected as the Book of the Month. If anyone is prompted to take up this study (I consider it unlikely), I suggest the book, cited above, by Professor Stone of the University of Sydney, as a recent (1946) and perhaps the most comprehensive work, citing nearly everything that has been written dealing with this subject. Another recent (1947) work is Legal Theory, by a London barrister, W. Friedmann. This work, like Professor Stone's, is obtainable through Carswell & Co., Ltd., Toronto.

And there are the standard, some of them classical, works by Montesquieu, Holland, Bryce, Maine, Pound, Kelsen, Gray. Other writers who have made notable contributions to juristic literature are Oliver Wendell Holmes, Jr., Benjamin Cardozo and Sir Frederick Pollock.

Lest anyone be deceived into rushing out and buying a fifteen dollar book such as Professor Stone's, thinking it will aid him to find the answer to a specific legal problem, I hasten to say that the recommended researches will furnish him no assistance whatever in this respect. This discipline may add to his legal, as the reading of Shakespeare or the Bible may add to his literary culture, but is guaranteed to produce no other benefit.

In later issues of the BULLETIN, I shall, unless enjoined or otherwise restrained, acts of God or the King's enemies not preventing, discuss certain jurisprudential topics, including natural law and the nature of law; perhaps adding something about the place of the lawyer in the development of legal systems.

"The Court cannot point out to the jury specifically the ways of the prudent; the law supposes those ways are better known to the jury than to the Judge."—*Richmond & D. R. Co. v. Howard*, 79 Ga. 44, 3 S. E. 426, 428.

"Can A Dead Man Practice Law?"

"CAN a Dead Man Practice Law?" is the heading of an article published in the California State Bar Journal of July, 1933. It was written by Henry Jacobsen, Jr., of the San Francisco Bar. The article raises the question of whether a law firm should continue to use the name of a deceased member in its firm name, years after the demise of such member.

Many members of the Los Angeles Bar no doubt have views on this question. If you will write a letter to the Editor, or an article for the BULLETIN, giving your views pro or con, it will be published if space permits.

WHEN IS ACCOUNTANT PRACTICING LAW?

Highlights of In re Bernard Bercu, New York Appellate Case, re Whether an Accountant Is Practicing Law When Giving Legal Advice Not Connected With Accounting Work Done by Him. Respondent Fined $50.

By John Laurie Martin,
of the Bar Bulletin Committee

IF AN accountant deserts the field of figures, and enters the field of legal opinion, his action is unlawful. So held the New York Courts (Appellate Division) on April 12, 1948, in an opinion that will stir coals that have never in recent years been quiescent (In the Matter of Bernard Bercu).

One Bercu, an accountant, brought a civil action against the Croft Company for professional services rendered. Judgment in the civil action was for the Company on the ground that Bercu's services were legal services. Using the transcript of the civil action, the local bar association of New York City applied for the contempt punishment of Bercu. The trial court, precedural aspects aside, held that Bercu's activity lay within the proper scope of the accounting profession, and, therefore, did not constitute unlawful practice of the law. The Association appealed, and after effort by eminent counsel on both sides, the Appeal Court reversed the judgment, adjudged respondent Bercu guilty of contempt, fined him $50, and issued an injunction against future violations.

TAX RETURN NOT BY BERCU

From the facts, it appears that Bercu did not prepare a tax return, nor was he in a retainer relationship with the Croft Company. In 1943 when the Company had large profits, though on an accrual basis, it sought to settle unpaid City sales tax claims for prior years if it could deduct the full amount of the settlement as an expense in the year 1943, rather than attribute

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C.P.A. DISCUSSES FAMOUS BERCU CASE

Outstanding Los Angeles Certified Public Accountant Gives His Views of the Bercu Case, Which Has Stirred Nation-wide Comment in Periodicals in That Field. Case to be Appealed Again.*

By John B. Norberg,
Immediate Past President, Los Angeles Chapter,
California Society of Certified Public Accountants

ACCOUNTANTS and lawyers all over the United States have been watching the case of *New York County Lawyers Association v. Bernard Bercu* with interest and concern. Members of both professions hope that the final decision will not create a precedent endangering the excellent relations which have prevailed between the professions in most cases and most places.

There is a field in tax practice which is common to lawyers and accountants, and it has long been recognized in practice that it is impossible to draw a sharp line with law on one side and accounting on the other. Situations arise not infrequently in tax matters when an accountant advises his client to engage the services of a lawyer. On the other hand, most lawyers recognize that, more often than not, the principal problem in the preparation of a tax return is the determination of the amount of taxable income, and that this is usually a job for an accountant rather than for a lawyer.

We think it unfortunate that a few lawyers, especially members of unauthorized practice committees, have taken the extreme position that all questions of tax law are exclusively prerogatives of the legal profession.

JUSTICE SHIENTAG HELD FOR BERCU

In the New York State Supreme Court last year, Justice Shientag ruled in favor of the defendant, and accountants are naturally inclined to agree with the following paragraph from

*This article approved by and collaborated in by Charles E. Noyes, of New York City, National Director of Public Information of the American Institute of Accountants.

his decision, in which the Justice discussed the accountants' position:

"Clearly, when he is pursuing his specialized calling, he has to be in a position to advise clients on matters that involve the law and are directly applicable to the work he is called upon to do. Merely because an accountant gives advice which may ultimately lead to litigation and impliedly prophesies the outcome of that litigation, it does not follow that he is illegally practicing law. The question, so far as the accountant is concerned, is whether the advice that is given deals primarily with proper accounting practice under the income tax law. In the interpretation of that statute, accounting and legal concepts are so intermingled that it is difficult, if not impossible at times, to separate or to distinguish one from the other."

The Bercu case was apparently selected by the New York County Lawyers Association as one least favorable to the accounting profession. Bercu admittedly gave advice on a tax matter to a firm which was not his regular client, and his advice involved an opinion of counsel of the Income Tax Unit of the Treasury Department.

APPELLATE COURT REVERSES SHIENTAG

In reversing Justice Shientag's decision, the Appellate Division of the New York Supreme Court evidently felt that it was necessary to draw a line somewhere between the practice of law and the practice of accounting in income tax matters. Even so, the Appellate Division held specifically that it is perfectly proper for an accountant to deal incidentally with questions of law in the preparation of a tax return. The Appellate Division then drew the line between the practice of accounting and the practice of law as follows:

"When, however, a taxpayer is confronted with a tax question so involved and difficult that it must go beyond its regular accountant and seek outside tax law advice, the considerations of convenience and economy in favor of letting its accountant handle the matter no longer apply, and considerations of public protection require that such advice be sought from a qualified lawyer."

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POLL OF LAWYERS FINDS PROGRAM WISHES

By James C. Sheppard,
Chairman, Program Committee

James C. Sheppard*

RESPONSIBILITY for arranging meetings of the organized bar is a duty which one shudders to undertake. A bar association meeting bears little resemblance to a regular meeting of a service club. In fact, considering the multiple interests, the inherent dogmatism, and the propensity to disagree with whatever another says, those who undertake the responsibility for arranging meetings for an organized bar do so with some degree of trepidation.

Realizing the many problems, the Board of Trustees of our Association authorized a survey by the Program Committee so that the wishes of its membership could be definitely known. The survey is of considerable assistance to the Program Committee, and its results should serve to satisfy the natural curiosity of many lawyers.

GOOD RESPONSE

The survey was taken during the month of March, 1948. The percentage of replies exceeded thirteen percent of the total membership of the Association. This is a pretty good response, considering the fact that even Mr. Gallup is willing to prophesy the state of public opinion on a national question with as small a sample as five thousand for the entire nation. Of those replying, sixty-two percent have been members of the Association in excess of ten years. Forty-one percent of the replies were from those who had been members of the Association for more than two years, but less than ten years.

Almost eighty-three percent of those replying had attended Bar Association meetings during the preceding year and eighty-

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two percent of these had attended more than one meeting. Seventeen percent of the replies were from those who had not attended meetings of the Association within the last year. This percentage is of considerable importance, for a sample of the opinions of only those who attend meetings would be meaningless.

There has always been a difference of opinion as to whether luncheon or dinner meetings are most desirable. Sixty-six percent of those replying expressed a preference for luncheon meetings, while thirty-two percent preferred dinner meetings.

It would seem that the historic precedent of omitting meetings during the summer months satisfies a majority of the lawyers. While thirty-five percent of the replies indicated the desire for a meeting each month, even during the summer months, sixty-five percent preferred that the Association have meetings only nine months of the year.

FAVOR GRIDIRON AT CHRISTMAS

Various bar administrations have utilized different policies for meetings during the month of December. Many lawyers, indeed nine percent of those replying, were in favor of eliminating December meetings entirely, but more than sixty percent of the replies indicated that the membership would prefer a Christmas party along the lines of a Gridiron Dinner. Accepting this expression of opinion as a mandate, your Program Committee recommended to the Board of Trustees that the consensus of opinion as reflected by the poll be followed with the result that the Board of Trustees approved this recommendation and there is now an active and capable committee preparing such a meeting.

It would seem that lawyers prefer a variety of subjects for discussion at their meetings. The following breakdown of the replies shows that the following questions are those in which lawyers are most keenly interested:

Law and related problems	75.9%
Current legislative subjects and problems	51.4%
International problems	39.6%
Problems affecting the Los Angeles Metropolitan Area	35.3%
Current political problems	31.7%
Current economic problems	30.6%
Substance and administration of Criminal Law	10.8%

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Silver Memories

Compiled from the Daily Journal of August, 1923
By A. Stevens Halsted, Jr., Associate Editor

"Steve" Halsted

WITH the sudden death of President Warren G. Harding in San Francisco, official circles are considering the creation of an office of assistant president, an official who would remove much of the routine work from the shoulders of the Chief Executive. The duties of that office have, especially in recent years, become so numerous and so exacting that the office has grown beyond the power of a single man to administer.

Woodrow Wilson is now broken in health as a result of the arduous duties connected with the office, and even Theodore Roosevelt, regarded as a man of super-vitality and strength, never regained his full physical vigor after his last term as President.

Now the untimely death of President Harding, largely due to fatigue incidental to the duties of his office, has emphasized this condition. In order that future terms may not be all but death warrants for the men elected to the highest office in the nation, the position of assistant president is being openly urged for creation by Congress.

* * *

Superior Judge **Albert Lee Stephens** of the local court is back in Los Angeles after more than a year and a half passed in Visalia where he tried the suit of the Tulare Irrigation District and others against the Lindsay-Strathmore Irrigation District involving the right to the use of

the available water supply in that section of the San Joaquin Valley.

* * *

By action of the City Council, the Occupational License Tax ordinance, which has been bringing the City of Los Angeles an annual return of about $500,000, was ordered repealed, effective the first day of next year. The Occupational tax was levied by the City upon business and professional men of the city more than three years ago when the municipal government, faced with a financial crisis, took the means of taxing business men of the city to yield additional revenue. The tax has been bitterly opposed by business and professional men.

* * *

Three new justices of the peace of Los Angeles Township were sworn into office by Chief Deputy County Clerk **L. A. Hill: Louis P. Russell, Charles D. Ballard,** and **Thomas L. Ambrose. William D. McConnell** and **James H. Pope** have been appointed new Police Judges.

* * *

At a meeting of the Los Angeles County Superior Court Judges, Judge **Charles S. Crail** designated the departments over which the newly appointed judges will preside for the coming year. Judge **Edwin F. Hahn,** who at present is in charge of juvenile and lunacy cases, will be relieved by Judge **Hartley Shaw** of Glendale, one of the new judges recently appointed by Governor Richardson. Judge **H. R. Archbald** of South Pasadena will take over "order to show" matters and the Torrens title cases now handled by Judge **Arthur Keetch,** who will be shifted to the criminal department. Judges **Paul J. McCormick** and **Frank R. Willis** will sit in the two probate departments. The other three new judges are Judges **John L. Fleming, Ira Thompson** and **Paul Burks,** who will be assigned to regular civil court work. Judge **Ralph H. Clock** will be in charge of a court devoted to cleaning up back divorce cases.

* * *

The State Board of Bar Examiners, which is composed of Hon. **F. M. Angellotti, Charles C. Cushing** and **George**

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CROSS-EXAMINATION— A JUDGE'S VIEWPOINT

By Bernard L. Shientag,
Justice, Appellate Division,
Supreme Court, New York

(Continued from the July issue)

Justice Shientag

YOU decide then in your mind what you seek to accomplish by your cross-examination. Do you wish to impair the credit of the witness? If so, do so at the outset of the examination. Soften him up at the beginning and then go on with the examination directly relating to the particular issues. If you impair the credit of the witness, he will be in a chastened mood, not knowing what other information you may have with which to afflict him.

If you can get off to a good start with the right question on your cross-examination, you have a great advantage. In the famous Seddon case which you will find reported in the British Notable Trials Series, Frederick Seddon and his wife were charged with murder of their lodger, Miss Barrow, by administering arsenic to her. It was commonly thought that if Seddon had not taken the stand in his own behalf the evidence adduced on behalf of the prosecution would have been insufficient to convict. As it was, the case aroused a great deal of discussion in legal circles in England. Seddon was convicted and paid the full penalty. His wife was acquitted. Seddon was represented by Marshall-Hall. The prosecution was represented by the Attorney General, Sir Rufus Isaacs, afterwards Lord Reading. Sir Rufus commenced his cross-examination of Seddon with the following questions:

Q. Miss Barrow lived with you from 26 July 1910 until the morning of 14 September 1911 (when she died)?

A. Yes.

Q. Did you like her?

Seddon replied, evidently completely upset by the question:

A. Did I like her?

Q. Yes, that is the question.

A. She was not a woman you could be in love with but I deeply sympathized with her.

The effect created by this question and answer was indescribable. Incidentally, it is worthy of note that whenever a witness is embarrassed or upset by a question he has a tendency to repeat it.

An aimless, reckless cross-examination, a fishing excursion, is not only inffective, but harmful and sometimes fatal. You may blindly ask a question which counsel for the other side did not dare ask on the direct, and with devastating results. You may thoughtlessly ask the one question which will supply a vital omission in your opponent's case. No one but the most experienced should resort to the so-called exploratory cross-examination. Every case can be resolved into a few significant, crucial issues. Your cross-examination should be aimed at those (not directly, of course) but towards them and always with the essentials of the case in mind. Effective cross-examination is not a haphazard process; quite the contrary; it has a plan, a purpose. Occasionally without intending it and quite by accident, you will hit the bull's eye; more frequently, however, as you proceed aimlessly, something will hit you that will shake you to the very marrow of your bones.

CROSS-EXAMINATIONS TOO LONG

Most cross-examinations are entirely too long. A long and rambling cross-examination of each witness in turn wearies the court and jury who are likely to lose interest in your questions and in your case. Moreover, the more extended your cross-examination, the wider the scope will be for redirect examination. Moderation, it has been said, "is the silken thread that runs through the pearl chain of all the virtues." Bear that in mind when you cross-examine.

Never, never, never, we are told, ask questions when you do not know what the answers will be. Well, that is a counsel of perfection and it is not always feasible to follow it. An experienced lawyer has put it this way: "The real art is never to ask a question unless you know the answer beforehand. Sometimes you have to take a chance but even then it is often

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Vox Populi

BAR BULLETIN EDITOR:

President Nossaman in the July BULLETIN invites attention to the legal learning displayed in Elizabethan drama. Perhaps this letter can serve as the basis of a footnote in the definitive study he desires.

Every dabbler in the subject knows that the graveyard scene in "Hamlet" is filled with legal allusions. Some general knowledge of ecclesiastical law is shown in the "maimed rites"; a surprising familiarity with the technical jargon of the conveyancer is displayed in the "skull of a lawyer" passage; and the then notorious case on forfeitures for suicide, growing out of the death of Sir James Hales, is skillfully parodied at the opening of the scene.

But it is the purpose of this letter to point out that Shakespeare's knowledge of the law enabled him, in the same scene, to anticipate by nearly three centuries and a half, a decision of the California District Court of Appeal.

"Hamlet: '. . . whose grave's this, sirrah?'
First Clown: 'mine sir . . .'
Hamlet: 'What man dost thou dig it for?'
First Clown: 'For no man sir.'
Hamlet: 'What woman then?'
First Clown: 'For none, neither.'
Hamlet: 'Who is to be buried in't?'
First Clown: 'One that was a woman sir; but rest her soul, she's dead.'"

The lawyer of today will immediately recognize in the quoted passage the ancient principle which lies at the root of the recent decision in *Telefilm Inc. vs. Superior Court,* 86 A. C. A. 143, 147-9.

Very truly yours,

PEERY PRICE.

WHAT! NO INDEX?

The annual index, usually appearing in the August issue each year, is missing in this issue. The question of compiling a 23-year index for the BAR BULLETIN from its beginning down to the present time, is under consideration.

If that is done, the index for the current year will be included in the composite index.

Or hadn't you even missed the index?

Junior Barristers to Edit Bulletin

THE September issue of the BAR BULLETIN will be exclusively edited by the Junior Barristers Committee of the Los Angeles Bar Association.

Edward Clayton Jones, chairman of that committee, will be the Editor, and the other members of his committee will be Associate Editors. They are Robert M. Barton, first vice chairman; David Agnew, second vice-chairman, and Edward C. Freutel, Jr., secretary-treasurer.

WHEN IS ACCOUNTANT PRACTICING LAW?

(Continued from page 384)

the expense to the years in which the claims accrued. The attorney for the Company advised that the lump payment would have to be charged against the prior years by virtue of certain U. S. Supreme Court decisions.

The president of the Company consulted Bercu, who, relying on the fact that the sales tax had not in fact been collected by the Company at the time of sales, and on an analogous Internal Revenue Department ruling, advised the Company that they could safely settle the city tax claim and treat it as a tax deduction for the year 1943 only. The appellate court framed the issue, with the following preliminary statement:

> "We shall not dwell on the adequacy or accuracy of the advice given, or discuss the applicable law, for the decision in a case of this kind should not turn on the quality of the advice given. The decision must rest on the nature of the services rendered and on whether they were inherently legal or accounting services."

But this did not suffice the Court, for it thereafter added:

> "When such problems arise, who is to say how much 'general' law is involved? Essential to the solution of any problem is recognizing all the elements of the problem. It is a fair question whether respondent recognized all the elements in this case."

FUNCTIONS OF LAWYER VS. ACCOUNTANT

With a certain uneasiness of mind, and after lengthy discourse, the Court drew the line between the functions of the lawyer and of the accountant with the following general holding:

"It is much too narrow a view, and one revealing inadequate perception, to regard the tax law as mainly a matter of accounting. More than most specialties in the law, tax law is drawn from and involved with many branches of law. It bridges and is intimately connected, for example, with corporation law, partnership law, property law, the law of sales, trusts and frequently constitutional law. Quite obviously, one trained only in accounting, regardless of specific tax knowledge, does not have the orientation even in tax law to qualify as a tax lawyer. Equally obviously, as a matter of administration, he may not practice any phase of tax law, regardless of what might be his subjective qualifications for the particular undertaking. Inquiry cannot be made in each case as to whether the particular accountant or accountants generally are sufficiently familiar with law on a particular tax question to be qualified to answer it. An objective line must be drawn, and the point at which it must be drawn at very least, is where the accountant or non-lawyer undertakes to pass upon a legal question apart from the regular pursuit of his calling."

To illustrate the holding, the Court concluded with:

"We have heard no proposal that accountants be ousted from the income tax field. It is precisely out of consideration of the interests which respondent emphasizes that a taxpayer may, if he wishes, leave the entire preparation of the tax return to his accountant, legal incidents included, without the necessity of engaging a lawyer. It may, and probably will, remain true, as respondent quotes the American Bar Association as noting, that the bulk of income tax work is not handled by lawyers. When, however, a taxpayer is confronted with a tax question so involved and difficult that it must go beyond its regular accountant and seek outside tax law advice, the considerations of convenience and economy in favor of letting its accountant handle the matter no longer apply, and considerations of public protection require that such advice be sought from a qualified lawyer. At that point, at least, the line must be drawn. The line does not impinge upon any of the business or public interests which respondent cites, or oust the accountant from the tax field or prejudice him in any way in the pursuit of his profession, or create any monopoly in the tax field in favor of the legal profession. It allows the accountant maximum freedom of action within the field which might be called 'tax accounting,' and is the minimum of control necessary to

give the public protection when it seeks advice as to tax law."

In comment, it may be said that the Court well recognized it was faced with a difficult problem in delineation. The line drawn, now rather hazy, may be given more substance with other decisions, or may be found untenable.

It is believed that both professions can and should work side by side in our modern intricate commercial world. When a man has authority to prepare pleadings, examine witnesses, and file briefs in the United States Tax Court, he will not readily admit that he does not have a right to prepare legal opinions. Is this the solution to the problem?

CERTIFIED ACCOUNTANT DISCUSSES FAMOUS BERCU CASE

(Continued from page 386)

Upon careful examination, this distinction seems less clear than it might appear at first glance. Apparently, if Bercu had given the same advice in the course of preparing a tax return for a regular client, he would not, in the court's opiinon, have been practicing law, but the decision implies that he was not within his rights in giving this advice as a special consultant.

The decision of the New York Appellate Division does not, therefore, actually draw any clear line between the practice of law and the practice of accounting; it would appear to be based, rather, on the circumstances under which an accountant offers advice. If the primary consideration is protection for the public—in this case, for the taxpayer—it is a little hard to see why an accountant's advice may be acceptable when it is given in connection with the preparation of a tax return, but giving the same advice as an outside consultant constitutes the unauthorized practice of law.

It seems to the accounting profession that sound public policy should be directed toward the question of whether the accountant can give correct advice in tax matters and not toward the circumstances under which the advice is given.

ADVISES AMICABLE SETTLEMENT

Since neither Justice Shientag nor the Appellate Division undertook to define exactly the limits of the accountants' quali-

fications to give advice in tax matters, it might be better to work out the problem through cooperation and agreement between the legal profession and the accounting profession rather than through any attempt to draw a hard and fast line between them. A reputable accountant will advise his client to consult a lawyer when it is likely to be to the client's advantage; few lawyers would attempt the accounting calculations necessary to determine the proper figure for taxable income when it is permissible to calculate this figure in several different ways. The accountants' position is exemplified in the following quotations from the March, 1948, Journal of Accountancy:

"Accountants recognize that there are some tax matters which should properly be handled by a lawyer—as, for example, complicated cases which may hinge upon the determination of domicile, the laws applicable to trust funds, or the construction of a will. In the more usual case, the question involved is one of fact to be determined by proper accounting methods.

"Since, however, it is not always easy to draw a line between accounting and legal problems, accountants also recognize that lawyers and accountants must sometimes have joint re-

sponsibilities in tax matters. The logic of the situation, therefore, makes it unrealistic for either profession to be given arbitrarily a position of superiority over the other in a field where their respective functions are in fact so inextricably intertwined."

". . . Satisfactory cooperation has in fact been achieved between individual accounting firms and individual law firms in many cases throughout the country. The current issue is to avoid artificial, impracticable legal fences which would interfere with normal intelligent relationships, and might stimulate competition in the courtroom, or prolix word battles that could only increase public confusion.

"The problem must be worked out by men of good will in both professions through fair presentation of the facts and intelligent conduct. It is in the best interests of both professions, and in the best interests of society as a whole, that there be cooperation, not conflict."

C.P.A.'S TO ASSIST BERCU TO APPEAL

In the belief that the decision of the New York State Appellate Division in the Bercu case is more likely to promote conflict than to allay it, the New York State Society of Certified Public Acountants, with the cooperation of the American Institute of Accountants, is preparing to assist Bercu in an appeal to New York State's highest court, the Court of Appeals. It is to be hoped that the final decision in this case will encourage lawyers and accountants to work together in the public interest and in their clients' interest, instead of creating barriers which would make such cooperation more difficult.

POLL FINDS PROGRAM WISHES

(Continued from page 388)

Other subjects suggested were those on practice and procedure, the improvement of the relationship between bench and bar, and the improvement in California practice.

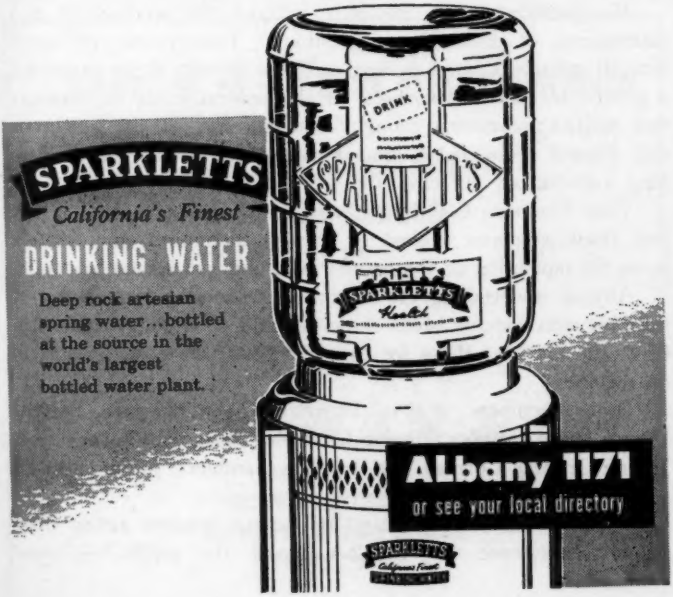
Panel discussions are favored in the plebiscite.

DELAYS IN LAW TOPS LIST

The following subjects attracted a substantial number of proponents:

Causes of, and remedies for the delayed administration of justice..... 58.0%

What reviewing courts expect of lawyers and what lawyers expect of reviewing courts	56.6%
Should the Taft-Hartley Act be amended	30.6%
Other suggested subjects:	
Points of law, history and procedure	4.9%
Current problems, legal situations	4.5%
Proposed changes in Federal and State Laws	3.8%
Other topics when competent speakers available	2.4%



Unlawful practice of law by real estate brokers and notary public	2.1%
Racial problems	.7%
County Court plan	.7%
Taxation	.3%

The majority of the members of the Bar Association prefer to hear discussions of program subjects by leaders in the legal profession. These preferences are expressed as follows:

Leaders in the Legal Profession	84.0%
California Judges	66.5%
Deans and Professors of Law Schools	54.9%
Educational Leaders	46.5%
Public Officials	45.8%
Judges other than California	45.1%
Other types of speakers[1]	6.4%

[1]Includes 7 mentions of leaders in business and industry; 2 mentions of scientists; 2 mentions of actors and entertainers; single mentions of senators, newspaper publishers, military, theologians, medical, Bar Association officials, persons of current national interest.

MANY VOLUNTARY SUGGESTIONS

No questionnaire is complete without the analysis of and cataloguing of voluntary suggestions. Twenty-four preferred that all talks be limited to legal subjects; twenty-three expressed a preference for a discussion of the several fields of business and politics; seventeen thought that the cost of the luncheons and dinners prohibited a greater attendance. Many objected to long introductory speeches and statistical routine.

Your Program Committee is extremely grateful for the full and frank response evoked by the questionnaire. Immediately upon the tabulation of the results its usefulness became apparent.

Anyone undertaking the responsibility for the formulation of the programs expects beefs, criticisms and good suggestions. Indeed, the more of these we have the better we shall be able to do the job.

Other members of the Program Committee are Stevens Fargo, board member; James L. Beebe, Hon. W. Turney Fox, Joseph Gregory Gorman, and John H. Saunders, junior member.

"The law is the last result of human wisdom acting upon human experience for the benefit of the public."—*Samuel Johnson.*

CROSS-EXAMINATION —A JUDGE'S VIEWPOINT

(Continued from page 392)

possible by careful approach to get an idea of the answer before the question is asked and it may even happen that you decide after all to move to another line of inquiry."

You must have a sense of proportion as you proceed with your cross-questioning. A discrepancy here and there does not impress a jury unfavorably. On the contrary, it often lends an air of verisimilitude to the story told by the witness. But if you develop a series of inaccuracies, even as to unimportant matters, you may succeed in convincing the jury of the unreliability of the witness. It is effective likewise if you get the witness to exaggerate to the point of showing a definite bias; or to indicate that he would deliberately or even carelessly testify to almost anything; or that he will admit nothing that you put to him. But care must be taken lest you make yourself the victim of the attempted exaggeration.

As you proceed with your cross-examination you should never relax your observation of the witness. Watch the way he reacts to your questions. Some say that a convulsive twitching of the muscles of the mouth will often betray agitation which the witness wants to conceal. There is no interrogatory so effective as that which is put by a steady, searching eye. Cross-examination may be regarded as a mental duel between witness and examiner and the examiner who takes his eyes from the witness is likely to be worsted as the swordsman who lets his eyes wander from his adversary. In a word, the skillful cross-examiner is one whose antennae are always aquiver and sensitive to the slightest reaction of the witness. The cross-examiner should not be interrupted in his line of cross-examination by whispered suggestions from his assistant or his client, nor should he be disturbed by sleeve pulling to attract his attention. Even the most experienced examiner can be thrown off balance and the examination itself marred by such annoyances. Suggestions for questions during the progress of the examina-

tion should be noted on slips of paper placed on the table and the examiner may pick them up whenever he wishes.

KNOWING WHEN TO STOP—THE ONE QUESTION TOO MANY

The most striking fault observed in cross-examination (and we who sit on the Bench are in a position to know this more than the active participants) is not knowing when to stop. That superfluous question; that one question too many! How often an otherwise good cross-examination has been wrecked by it! If you have driven the nail in deep enough, it is generally fatal to keep on hammering at it. Time and again we find questions put that elicit vital answers supplying the deficiencies of the direct examination. Time and again the cross-examiner is not satisfied with the damaging answer he has obtained but keeps on and asks the one question too many that turns the tide completely against him. Some of the ablest cross-examiners are guilty of this lapse.

The classic example of not knowing when to stop is found in the celebrated libel suit of *Whistler v. Ruskin*. One of Whistler's so-called "nocturnes" had been placed on public exhibition. It was called "Falling Rocket at Cremorne Gardens." I saw it in one of the art galleries here last year and confess that it puzzled me somewhat. It aroused the ire of Ruskin who wrote:

> I have seen and heard much of Cockney impudence before now, but never expected to hear a coxcomb ask two hundred guineas for flinging a pot of paint in the public's face.

Whistler sued Ruskin for libel. He was represented by Serjeant Parry and Ruskin by the Attorney General, Sir John Holker, both pre-eminent at the Bar. In cross-examination, Sir John asked Whistler how long it took him to knock off "that nocturne." Whistler replied "As I remember, a day * * * I may still have put a few touches to it the next day if the painting were not dry. I had better say that I was two days at work on it." Now, the Attorney General could have stopped there and he could have inquired whether Whistler asked 200 guineas for the painting. That would have been good, orthodox cross-examination. Instead of that he said: "Oh, two days! The labor of two days, then is that for which you ask 200 guineas?"

Whistler had Sir John where he wanted him. Like a flash, he replied, "No, I ask it for the knowledge of a lifetime." It was "a crushing reply to a fellow man of art who was sitting with a hundred guinea brief in front of him 'knocking off' a day's work."

DON'T TAUNT A POLECAT

But Holker was a bear for punishment. He asked Whistler "Do you think you could make *me* see the beauty of that picture?" Whistler gazed at the picture and at the Attorney General attentively several times, scanning his face carefully. At the

end of a long silence he said gravely: "I fear it would be as hopeless as for a musician to pour his notes into the ear of a deaf man." It is never safe to taunt a polecat and it is risky business to ask a hostile witness a question unless sure there is not a morass under it.

With experience you will learn to stop when the last answer of a witness is so framed as in itself to be a danger signal. The advice of an expert cross-examiner is "not to make the common mistake of putting one question too many in order to emphasize a good point. If you try to get a more emphatic answer, you may find the witness has had time to think and you will get an answer that will destroy all the good you have achieved." Always try to stop in your cross-examination on a note of triumph. Once you have obtained an admission from a witness which effectively establishes your position on one of the essentials of the case, stop the cross-examination of that witness. Try your luck on other points with other witnesses called by your adversary.

Lord Simon, who was one of the most successful of English barristers, says in his advice to lawyers about cross-examination: "Lastly, don't overcook your goose, *i.e.*, if you get a useful admission, keep it in cold storage for your final speech and don't try to get it repeated—or you may lose it altogether." This is a fundamental principle expressed in striking language. It should never be lost sight of.

In cross-examination, as in other steps in the trial of a case, those counsel who have learned the art of compression are the most successful. Don't cross-examine on everything unimportant or trivial; use a sense of proportion and of moderation. It is in this "segregation of the relevant from a tempting superfluity of information" that a cross-examiner shows himself to be a master of his art. Lord Maugham puts it thus:

> In a case with masses of material, one of the chief duties of counsel is to select and discriminate. I have known cases where a skilled advocate having materials which might have provided for a week's cross-examination of a party to the suit has put some pertinent questions for half an hour and then sat down content to know that neither judge nor jury could put any faith

in the witness' answer as against the independent evidence of the other side.

KNOWING WHEN NOT TO STOP

Reference has been made to the one question too many; to the importance of knowing when to stop. I should like to refer for a moment to the converse, to the importance of knowing when not to stop. This applies, for example, when you have a writing signed by a witness. Never refer to it, and certainly do not offer it in evidence, until the witness has committed himself, fully and unequivocally, to some relevant statement which is clearly at variance with that contained in the writing. Do not rest with any half statement or ambiguity he can explain away later. In other words, do not let the nail hang loosely; drive it home before the witness is confronted with the document.

CROSS-EXAMINATION IS NOT REPETITION

Another common fault is the failure to realize that cross-examination is not the repetition of the story told by witness on the direct. Occasionally, with a child especially, repetition demonstrates that the witness has been coached and is telling a rehearsed story. Generally however, it is ineffective and even harmful. It is axiomatic that you should avoid having a thing harmful to you stated twice by a witness. By having the witness repeat his testimony, you fix it in the minds of the jury and run the risk of the mention of some fresh point that had previously not been gone into. Sir James Scarlett, who later became Lord Chief Baron Abinger, and who was one of the outstanding advocates of his day, said of a lawyer that his idea of cross-examination was putting over again every question asked in chief in an angry tone. All that accomplishes is that the witness only repeats his story in stronger language to the jury.

(Continued in the October issue,—the Junior Barristers have the September issue.)

SILVER MEMORIES

(Continued from page 390)

F. McNoble, report that the present class of successful applicants is the largest for admission to practice in the history

of the State. 123 men and 5 women passed the July examination.

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Congressman **George P. Darrow** of Pennsylvania in a recent speech in San Francisco declared that the United States must maintain a naval force of sufficient strength to enable the Navy to cope with any emergency situation. This condition, he said, had been necessitated partly by the World War, and partly by the terms of the armament conference. As a result of the War, Japan acquired islands in the Pacific, all of which are of great military value. By the terms of the Washington treaties, the United States had to withdraw nearly all her forces from Guam, he said, which has left the island in a weakened condition and a vulnerable spot for an enemy attack.

* * *

A new boulevard stop ordinance is being passed by the City Council. The new law will be tried on three streets, Wilshire Boulevard, Mission Road between Aliso and Alhambra, and Figueroa Street. City Attorney Stephens is preparing the new ordinance which will compel all vehicles to come to a full stop before entering the streets designated. After an argument over trying out the new system on one street or on three, the Council voted to give the plan a try-out on the three streets. If good results are obtained, the system will be extended to include the whole twelve streets recommended by the City Planning Commission.

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Some of the aspirants for the vacancy on the Federal Bench created by the death of Judge **Oscar Trippet** of Los Angeles are Judge **Howard A. Peairs** of Bakersfield and **William C. Ring,** Madera attorney. Former Judge **H. Z. Austin** of Fresno, now trust officer of a Fresno bank, has already announced his hat is in the ring. Austin and Peairs were choices of Senator Johnson for the new judgeship recently created and filled by appointment of **William P. James** of Los Angeles. Ring was also mentioned for the vacancy at that time.

"A man surprised is half beaten."—*Hennepin Lawyer.*